



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAR 19 2004

Friends of Weiner and  
Ira Spodek, as Treasurer  
c/o Cassandra F. Lentchner  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

Re: MUR 5429

Dear Ms. Lentchner:

On March 9, 2004, the Federal Election Commission found that there is reason to believe that your client, Friends of Weiner and Ira Spodek, as treasurer (the "Committee"), violated 2 U.S.C. §§ 434(a)(6), 434(b) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

The Committee may submit any factual or legal materials that it believes are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If the Committee is interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if it agrees with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

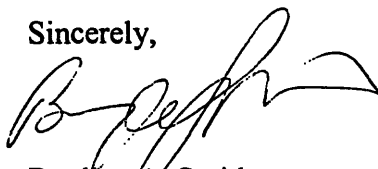
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

Please have the Committee complete the enclosed designation of counsel form stating your name, address, and telephone number, and authorizing you to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless the Committee notifies the Commission in writing that it wishes the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Beth Mizuno, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis  
Procedures  
Designation of Counsel Form  
Conciliation Agreement

**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Friends of Weiner and Ira Spodek, as Treasurer

**MUR 5429**

**I. INTRODUCTION**

This matter was generated by an audit of Friends of Weiner ("FOW"), which was conducted by the Audit Division of the Federal Election Commission ("Commission") pursuant to 2 U.S.C. § 438(b). The audit covered the period from January 1, 1999 to December 31, 2000 ("Audit Period"). FOW is an authorized campaign committee of Representative Anthony D. Weiner ("Candidate" or "Anthony Weiner"), a member of the United States House of Representatives from New York's 9<sup>th</sup> Congressional District. According to its most recent financial report, which was filed on May 21, 2003, FOW's current treasurer is Ira Spodek.

The Commission approved the Report of the Audit Division on FOW on April 22, 2003. The audit revealed apparent violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Final Audit Report included findings that FOW had: (1) accepted 183 contributions from individuals totaling \$212,801 in excess of the limitations of the Act; (2) failed to file required 48-hour notifications for 32 contributions totaling \$50,000; and (3) accepted loans totaling \$28,000, which constitute additional excessive contributions under the Act.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Excessive Contributions from Individuals**

Based upon the analysis set forth in the audit referral, the Commission found reason to believe that FOW and Ira Spodek, as treasurer, violated 2 U.S.C. § 441a(f) by accepting

contributions totaling \$212,801 in excess of the limitations set forth in the Act. *See* Attachment 1 at 2-5. Of the 183 excessive contributions, 175 of them (totaling \$202,801) were for the primary election and eight of them (totaling \$10,000) were for the general election.

#### **B. 48-Hour Notification Violations**

Based upon the legal and factual analysis set forth in the audit referral, the Commission found reason to believe that FOW and Ira Spodek, as treasurer, violated 2 U.S.C. § 434(a)(6) by failing to file 48-hour notifications for 32 contributions totaling \$50,000. *See* Attachment 1 at 8-9.

#### **C. Excessive Loans**

A loan made by any person for the purpose of influencing any election for federal office is a contribution. 2 U.S.C. § 431(8). The aggregate amount loaned to a candidate or a committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth in the Act. 11 C.F.R. § 100.7(a)(1)(i)(B). A loan, to the extent it is repaid, is no longer a contribution. *Id.* A loan that exceeds the contribution limitations set forth in the Act is unlawful whether or not it is repaid. 11 C.F.R. § 100.7(a)(1)(i)(A). A committee must report the identity of an individual from whom it receives a contribution where the contribution, when aggregated with other contributions made during the reporting period, totals more than \$200. 2 U.S.C. § 434(b). In addition, in its reports, a committee must itemize loans it receives and provide the identity of the lender. *Id.* Finally, a committee must report the amount and nature of its outstanding debts and obligations. *Id.*

The Audit Division discovered that during the Audit Period, FOW repaid a \$28,000 loan that it claimed it received from Anthony Weiner in September 1998. FOW repaid \$10,000 to

Anthony Weiner at the end of 1998 and repaid the remaining \$18,000 in 1999. The final repayment was made on October 15, 1999. In reports it filed with the Commission between October 1998 and January 2000, FOW reported the \$28,000 as a loan from Anthony Weiner. The loan was reported by FOW to have been made by Anthony Weiner in two payments: a \$20,000 payment on September 4, 1998 and an \$8,000 payment on September 10, 1998. The money was received just days before the September 15, 1998 New York primary election, and appears to have provided FOW with additional funding at a particularly critical time in Anthony Weiner's campaign for Congress. Anthony Weiner won the September 15, 1998 Democratic primary election with 29% of the vote in a close four-way race.

When it discovered the loan repayments, the Audit Division requested that FOW produce records sufficient to determine whether the loan was made from Anthony Weiner's personal funds. Counsel for FOW claimed that no loan documents existed and refused to produce the requested bank records on the grounds that the loan fell outside the Audit Period. The Commission issued a subpoena to FOW requesting production of the documents and a subpoena to Anthony Weiner to identify the source of the funds used to make the loan.

While the subpoena request was pending, counsel for FOW produced statements from Anthony Weiner's bank account at the Municipal Credit Union ("MCU") for the months of September and October 1998 and a copy of one of the loan proceed checks from his MCU account payable to FOW in the amount of \$20,000. In a letter accompanying the production, counsel for FOW stated that Anthony Weiner had no other bank accounts and did not have a copy of the other loan proceeds check (i.e., for the other \$8,000 loaned to FOW). Counsel explained that Anthony Weiner did not have a copy of his account statement for August 1998 and that, due to a computer malfunction, MCU was unable to retrieve a copy of the August 1998

statement. Counsel forwarded a letter from an MCU officer confirming the computer malfunction.

The MCU statements for September and October 1998 revealed that on September 2, 1998, just prior to making the loan to FOW, Anthony Weiner deposited \$5,000 into the account, bringing the balance to \$32,222. By September 10, 1998, he had transferred \$28,000 of this amount to FOW. This account activity raised further questions as to the source of the funds used to make the loan. Specifically, the auditors sought to discover the source of the September 2, 1998 \$5,000 deposit, as well as the source of the other \$27,222 that was in the account at the time the loan was made.

Anthony Weiner responded to his subpoena by stating, "the funds I used to make loans to Friends of Weiner, totaling \$28,000, in September 1998 were funds in my personal bank account at the Municipal Credit Union." He also stated that he recalled that, at that time, he deposited into that account \$10,000 he received from his father and over \$2,500 he received from his mother.

The Commission then issued a subpoena to MCU, requesting the production of documents sufficient to identify all items in excess of \$2,000 deposited into Anthony Weiner's account from July through August 1998. The subpoena also directed MCU to provide documentation to identify the source of the \$5,000 deposit into the account on September 2, 1998. On September 16, 2002, MCU produced copies of the following four checks, totaling \$30,000, which were deposited into Anthony Weiner's account in August 1998:

- (1) a \$15,000 check dated August 3, 1998, from Morton Weiner (with "loan" written on the memo line);
- (2) a \$5,000 check dated August 5, 1998, from Frances Weiner (memo line blank);
- (3) a \$2,862 check dated August 5, 1998, from Frances Weiner (memo line blank); and

- (4) a \$7,138 check dated August 3 1998, which was drawn on an investment account and payable to Frances Weiner (memo line blank).

MCU stated that it was unable to produce a copy of the \$5,000 deposit into the account on September 2, 1998. To date, FOW and Anthony Weiner have provided no information regarding the source of the \$5,000 deposit made into Weiner's account on September 2, 1998.

In the interim audit report, FOW was asked to provide evidence demonstrating that the contributions in question were not excessive. FOW made no such showing. Instead, FOW stated that "the Candidate returned the amount in question to his parents."

The money from Morton Weiner and Frances Weiner comprised a substantial portion of the \$32,222 in the MCU account when Anthony Weiner loaned \$28,000 to FOW. Thus, the \$28,000 loan did not represent Anthony Weiner's personal funds but rather money provided by his parents, Morton Weiner and Frances Weiner. Anthony Weiner's parents thus funded the loan and appear to have made excessive contributions. See 2 U.S.C. § 441a(a)(1)(A). The Commission found reason to believe that FOW accepted these excessive contributions in violation of 2 U.S.C. § 441a(f).

In six reports it filed between October 19, 1998 and January 29, 2000, FOW reported the loan as a loan to it from Anthony Weiner. In addition, FOW reported the loan payments as payments to Anthony Weiner, rather than payments to his parents, who ultimately received the funds.

The Commission found reason to believe that FOW misreported the loans in violation of 2 U.S.C. § 434(b)(8) and misreported the loan payments in violation of 2 U.S.C. § 434(b)(5)(D).